

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

MDL NO. 1456

THIS DOCUMENT RELATES TO:

PROPOSED BMS SETTLEMENT

CIVIL ACTION: 01-CV-12257-PBS

Judge Patti B. Saris

**CLASS COUNSEL'S MOTION TO RESET DATE OF HEARING ON
FORTHCOMING MOTION FOR PRELIMINARY APPROVAL
OF THE PROPOSED BMS SETTLEMENT**

During the Court's May 28, 2009, Status Conference in these actions, the Court tentatively set Friday, July 24, 2009, to hold a hearing on the forthcoming motion for preliminary approval of a class-wide Proposed Settlement with defendant BMS. A mediation with Professor Eric Green has since been conducted on June 22, 2009 between Allocation Counsel for consumers and TPPs. At the end of that mediation, Allocation Counsel reached agreement on a proposed split of the settlement monies between consumers and TPPs.

Since the mediation, Class Counsel and counsel for BMS have been working to finalize a Settlement Agreement, Proposed Distribution Plan and Claims Process, and sundry documents related to implementing the Proposed Settlement, including proposed forms of notice, a notice plan, and relevant proposed orders. This process has taken longer than anticipated, and the parties will not be able to file the motion for preliminary approval in sufficient time for a July 24 hearing.

Accordingly, Class Counsel move the Court for an order resetting the hearing on preliminary approval of the BMS Proposed Settlement during the week of August 10, 2009. Class Counsel anticipate filing the motion for preliminary approval no later than August 4, 2009.

Both Class Counsel and counsel to BMS do not anticipate any further delays in filing the motion for preliminary approval. BMS joins in this motion.

WHEREFORE, the Plaintiffs respectfully request the Court enter an Order resetting the preliminary approval hearing for the Proposed Settlement with BMS to the week of August 10, 2009.

DATED: July 14, 2009.

By /s/ Steve W. Berman
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CLASS COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that I, Steve W. Berman, an attorney, caused a true and correct copy of the foregoing motion to be delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on July 14, 2009, a copy to LexisNexis File & Serve for posting and notification to all parties.

/s/ Steve W. Berman

Steve W. Berman